

**REMARKS****INTRODUCTION:**

In accordance with the foregoing, claims 1, 4, 6, 7 and 8 have been amended. No new matter is being presented, and approval and entry are respectfully requested.

Claims 1, 4, 6, 7 and 8 are pending and under consideration. Reconsideration is respectfully requested.

**REJECTION UNDER 35 U.S.C. §112:**

In the Office Action, at page 2-3, claims 1, 4, 6, 7 and 8 were rejected under 35 U.S.C. §112, first paragraph, for the reasons set forth therein. This rejection is traversed and reconsideration is requested.

Independent claim 1 has been amended to recite, in part: “a plurality of route load measuring units each provided in, or in the vicinity of, each of said server terminals and each measuring a respective load in a TCP/~~non-TCP~~UDP delivery route from the route load measuring unit to one client terminal having issued a request for service out of said client terminals.” Independent claims 4, 6, 7 and 8 have been amended in similar fashion. This distinction was explained because Colby et al. (USPN 6,449,647), which was cited against the present invention, teaches splitting delivery techniques into non-TCP deliver and TCP delivery, thus teaching away from the present claimed invention. That is, for non-TCP delivery, Colby et al. teaches calculating a minimum bandwidth based on a total bandwidth PortBW available to the logical egress port of the flow and the hop latency hopLatency (a static value contained in the candidate server record) of the flow. Hence, Colby et al. teaches calculating a minimum bandwidth for non-TCP delivery based on hops, which is not recited by the present invention. For TCP delivery, Colby et al. does not teach adjusting the window size, but rather teaches using the TCP window size in the request. In contrast, the present invention adjusts the window size as needed to avoid congestion. For further clarity, the terminology “TCP/non-TCP” has been amended to recite “TCP/UDP.”

Independent claim 1 has also been amended to recite, in part: “wherein said route load measuring units each measures, as the load, an effective bandwidth of the route, the effective bandwidth estimated based on a plurality of parameters, wherein the parameters include at least one of: a round-trip time, a maximum segment size, ~~and~~or an adjustable congestion-evading congestion window size for a server terminal utilizing TCP, or a number of simulated sessions for

a server terminal utilizing UDP." Independent claims 4, 6, 7 and 8 have been amended in similar fashion. This amendment is supported by page 22, lines 3-5 and page 38, lines 19-21. Thus, parameters for a TCP route as well as a UDP route are provided.

Hence, it is respectfully submitted that claims 1, 4, 6, 7 and 8 are now clear under 35 U.S.C. §112, first paragraph.

**REJECTION UNDER 35 U.S.C. §103:**

In the Office Action, at pages 4-8, claims 1, 4, and 6-8 were rejected under 35 U.S.C. §103(a) as being unpatentable over Jindal et al. (USPN 6,327,622; hereafter, Jindal) in view of "Dynamic Computation of TCP Maximum Window Size for Directly Connected Hosts" (hereinafter referred to as the IBM Technical Disclosure), and in further view of Martin (USPN 6,263,368; hereafter, Martin). The reasons for the rejection are set forth in the Office Action and therefore not repeated. The rejection is traversed and reconsideration is requested.

Independent claim 1 has been amended to recite, in part: "a plurality of route load measuring units each provided in, or in the vicinity of, each of said server terminals and each measuring a respective load in a TCP/~~non-TCP~~UDP delivery route from the route load measuring unit to one client terminal having issued a request for service out of said client terminals" and "wherein said route load measuring units each measures, as the load, an effective bandwidth of the route, the effective bandwidth estimated based on a plurality of parameters, wherein the parameters include at least one of: a round-trip time, a maximum segment size, and/or an adjustable congestion-evading congestion window- size for a server terminal utilizing TCP, or a number of simulated sessions for a server terminal utilizing UDP." Independent claims 4, 6, 7 and 8 have been amended in similar fashion.

As noted by the Examiner, Jindal does not explicitly show the bandwidth measuring parameter for round-trip time, maximum segment size and adjustable congestion-evading congestion window size. It is respectfully submitted that neither the IBM Technical Disclosure nor Martin disclose estimating an effective bandwidth using a number of simulated sessions for a server terminal utilizing UDP, as is recited in amended claims 1, 4, 6, 7 and 8.

Thus, it is respectfully submitted that amended claims 1, 4, 6, 7 and 8 are patentable under 35 U.S.C. §103(a) over Jindal et al. (USPN 6,327,622) in view of "Dynamic Computation of TCP Maximum Window Size for Directly Connected Hosts," and in further view of Martin (USPN 6,263,368), alone or in combination.

**CONCLUSION:**

In accordance with the foregoing, it is respectfully submitted that all outstanding objections and rejections have been overcome and/or rendered moot, and further, that all pending claims patentably distinguish over the prior art. Thus, there being no further outstanding objections or rejections, the application is submitted as being in condition for allowance which action is earnestly solicited.

If the Examiner has any remaining issues to be addressed, it is believed that prosecution can be expedited by the Examiner contacting the undersigned attorney for a telephone interview to discuss resolution of such issues.

If there are any underpayments or overpayments of fees associated with the filing of this Amendment, please charge and/or credit the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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